

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**BOARD OF ZONING ADJUSTMENT**



Application No. 15085 of H.S. Rogan, Jr., pursuant to 11 DCMR 3107.2, for a variance from the allowable percentage of lot occupancy requirements (Sub-section 403.2), and a variance from the lot area requirements (Sub-section 401.3) for the proposed construction of a flat in an R-4 District at premises 401 - 10th Street, S.E., (Square 947, Lot 19).

HEARING DATE: September 13, 1989  
DECISION DATE: September 13, 1989 (Bench Decision)

FINDINGS OF FACT:

1. The subject property is located at the intersection of 10th and D Streets, S.E. It is known as premises 401 10th Street, S.E. The site is in the R-4 District.

2. The subject lot is rectangular in shape. It is 19.17 feet in width and 72.25 feet in length. Presently, the lot is vacant.

3. The R-4 District permits matter-of-right development of residential uses. The Zoning Regulations require a minimum lot area of 1,800 square feet, a minimum lot width of 18 feet, a maximum lot occupancy of 60 percent, and a maximum height limit of three stories/forty feet.

4. The square in which the property is located is split-zoned C-2-A and R-4. Because of the split zoning, there is a diverse mixture of uses in the area. The commercial uses are located south of the site and include office space and retail establishments. Eastern Market Square is located west of the site. The Eastern Market Metro Station is located approximately two blocks southwest of the property. The residential component of the neighborhood consists of two-story row dwellings and low density apartment buildings.

5. The applicant proposes to construct a three-story flat. The structure would occupy the full width of the lot and would have no side yards. A 30-foot rear yard and one parking space would be provided.

6. The first floor would consist of a one-bedroom apartment, the second and third floors are to be used as one unit, with a living room, dining room, kitchen and powder

room on the second floor, and three bedrooms and two bathrooms on the third floor.

7. The applicant proposes a lot occupancy of 934 square feet or 72.5 percent, exceeding the maximum percentage of lot occupancy by 103.68 square feet or 12.5 percent. The applicant therefore request a variance from the lot occupancy provision in the amount of 103.68 square feet.

8. The subject lot contains an area of 1,385.03 square feet, 419.92 square feet less than the 1,800 square feet required by the Zoning Regulations. A lot area variance in the amount of 419.92 square feet is therefore requested by the applicant.

9. The applicant testified that the lot is smaller than the nearby properties and that no house can be built without variance relief. The applicant further indicated that the lot cannot be increased because it is a corner lot and the property adjacent to it is fully improved. This, the applicant maintains, is a unique condition which creates a practical difficulty for the owner in an effort to develop the property in accordance with the Zoning Regulations.

10. The applicant testified that because the area surrounding the lot is also residential and that the design of the structure will be compatible with other corner houses in the area, granting the variances for the construction of the proposed flat will not be a substantial detriment to the public good nor will there be a substantial impairment to the intent, purpose or integrity of the Zoning Regulations and Maps.

11. A similar request for variance relief regarding the subject property was granted by the Board in 1980 by Order No. 13242, but the owner allowed the Order to lapse.

12. The Office of Planning (OP), by memorandum dated August 25, 1989 and through testimony at the hearing, recommended approval of the application with a condition. OP noted that the site is located in the Ward 6 neighborhood of Capitol Hill and within the boundaries of the Capitol Hill Historic District. OP indicated that the substandard size of the property creates a practical difficulty for the owner in developing the property. Noting that the existing lot of record was created prior to enactment of the Zoning Regulations, OP indicated that to construct any dwelling on the site would require area variance relief from the Board. OP is of the opinion that the relief requested is minor and therefore will not be of substantial detriment to the public good. OP is also of the opinion that, because of the presence of the C-2-A zone in the square, the Zoning Regulations will not be substantially impaired if the R-4 zoned property would be developed beyond the 60 percent maximum

lot occupancy requirement to allow a reasonable sized building.

13. The Office of Planning recommends approval of the subject application provided that the applicant submits the current plans to the Historic Preservation Review Board for review. OP notes that there is a slight difference between the current plans and those reviewed previously in application No. 13242. The Board concurs.

14. Advisory Neighborhood Commission (ANC) 6B, by letter dated September 5, 1989, expressed support for the minimum lot area variance but opposition for the maximum percentage of lot occupancy variance. The ANC feels that nothing can be built without a lot area variance because of the undersized lot but states that the applicant has not presented sufficient justification for the lot occupancy variance. The ANC feels that the proposed building is too large and grossly out of scale with the surrounding improvements.

15. The Board agrees with the ANC that the lot is small thereby requiring a lot area variance, but is satisfied that the proposed structure will not be incompatible with surrounding improvements.

16. By letter dated September 11, 1989, the Capitol Hill Restoration Society (CHRS) supported the subject application with two conditions: (a) the building should not extend farther than the adjoining building to the south and (b) the roof line should not differ substantially from that of the adjoining structures.

17. The Board finds that the proposed plans meet the conditions presented by the CHRS.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and evidence of record, the Board concludes that the applicant is seeking area variances for the proposed construction of a flat in an R-4 zone. The granting of variances requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. The Board further must find that granting the requested relief will not be of substantial detriment to the public good and will not

substantially impair the intent and purpose of the zone plan. The Board concludes that the applicant has met this burden of proof.

The Board concludes that the lot is small in size thereby creating a practical difficulty for the owner in developing the property. The Board concludes that the property is located in an R-4 District, surrounded by residential development. The lot occupancy variance of 103 square feet or 12.5 percent is caused by the small size of the site. The variance is reasonable and minor in nature. All other requirements of the Zoning Regulations are met. The Board further concludes that the applicant is committed to working with the Historic Preservation Review Board to ensure compatibility with historic requirements. Therefore, the Board is of the opinion that granting the requested variances will not be of substantial detriment to the public good.


The Board further concludes that the requested variances are minor and therefore will not substantially impair the intent, purpose or integrity of the zone plan.

The Board has afforded the ANC "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is hereby GRANTED SUBJECT to the CONDITION that the final plans meet with the approval of the Historic Preservation Review Board.

VOTE: 5-0 (Lloyd D. Smith, Charles R. Norris, Paula L. Jewell, William F. McIntosh and Carrie L. Thornhill to grant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
EDWARD L. CURRY  
Executive Director

FINAL DATE OF ORDER:

MAR 23 1990

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT.

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15085order/LJP59

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 15085

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mail to all parties, dated MAR 23 1990, and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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EDWARD L. CURRY  
Executive Director

DATE: \_\_\_\_\_